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राजपत्र, हिमाचल प्रदेश (प्रसाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 2 जनवरी, 1988/12 पौष, 1909

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH VIDHAN SABHA SECRETARIAT

NOTIFICATION

Shimla-4, the 28th December, 1987

No. 1-41/87-VS.—In pursuance to rule 135 of the Rules of Procedure & Conduct of Business of the Himachal Pradesh Legislative Assembly, 1973, "The Code of Criminal Procedure (Himachal Pradesh Amendment) Bill, 1987 (Bill No. 25 of 1987) having been introduced

on the 28th December, 1987, in the Himachal Pradesh Legislative Assembly, is hereby published in the Gazette.

Sd/-
Secretary.

Bill No. 25 of 1987.

THE CODE OF CRIMINAL PROCEDURE (HIMACHAL PRADESH AMENDMENT) BILL, 1987

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974) in its application to the State of Himachal Pradesh.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (Himachal Pradesh Amendment) Act, 1987.

Short title, extent and commencement.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come into force at once.

2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), section 21 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

Amendment of section 21.

“(2) Notwithstanding anything contained in sub-section (1), or elsewhere in this Code, the State Government may confer on any Gazetted Officer functioning as an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class to try all or any of the offences referred to in Chapter XXII-A:

Provided that the conferment of such powers on an Executive Magistrate shall be regulated by rules framed in this behalf by the State Government in consultation with the High Court.

(3) The officer on whom the powers of the Judicial Magistrate of the first class are conferred under sub-section (2) shall be called the Executive Magistrate of the first class and the officer on whom the powers of a Judicial Magistrate of the second class are conferred under the said sub-section shall be called the Executive Magistrate of the second class.”

3. After section 271 of the principal Act, the following new Chapter XXII-A shall be inserted, namely:—

Insertion of new Chapter XXII-A.

“CHAPTER XXII-A

INQUIRIES AND TRIALS BY EXECUTIVE MAGISTRATES OF FIRST CLASS OR OF SECOND CLASS.

271-A. Notwithstanding anything contained in this Code, the Executive Magistrate of the first class or of the second class on whom the powers of a Judicial Magistrate of the first class or of the second class are conferred under sub-section (2) of section 21 shall, to the exclusion of any other Magistrate, have power to try offences specified in the Third Schedule to this Code.

Conferment of powers on Executive Magistrates of first class or of second class.

Special provision for purposes of section 271-A.

271-B. (1) Subject to the control of the State Government, the District Magistrate may, from time to time, define the local limits of the areas within which the Executive Magistrate of the first class or of the second class may exercise all or any of the powers with which he may be invested under section 271-A.

(2) The District Magistrate may, from time to time, make rules or give special orders consistent with the Code as to the distribution of business among the Executive Magistrates of the first class and of the second class.

(3) If a person is accused of different offences committed in the course of the same transaction and such offences fall under section 271-A and any offence other than the offence referred to in the said section, the Executive Magistrate of the first class or of the second class shall have no jurisdiction to try such person and such person shall be tried by a court having jurisdiction under this Code.

(4) Where, after taking cognizance of any offence, the Executive Magistrate of the first class or of the second class is of the opinion that the offence is not an offence falling under section 271-A, he shall, notwithstanding that he has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under this Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of that offence.

(5) Nothing in this Chapter shall apply to cases relating to any offence under this Chapter taken cognizance of by any court before the conferment of power on Executive Magistrates under sub-section (2) of section 21 and every such offence shall continue to be dealt with under this Code as if such conferment of power had not taken place.

(6) Whenever it is made to appear to a District Magistrate that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from the court of one Executive Magistrate of the first class or of the second class to another such court.

(7) The District Magistrate, for the purpose of sub-section (6), may act either on the report of the Court of the Executive Magistrate of the first class or of the second class, or on the application of a party interested, or on his own initiative:

Provided that where an application for the transfer of a case from the court of the Executive Magistrate of the first class or of the second class to another such court has been made to the Sessions Judge, no such application shall be made to the District Magistrate.

(8) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the District Magistrate for an order under sub-section (6) as they apply in relation to an

application to the High Court for an order under sub-section (1) of section 407, except that sub-section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty rupees" were substituted.

271-C. Subject to the provisions contained in section 271-B, the Executive Magistrate of the first class or of the second class shall, for the purpose of any inquiry or trial of any offence referred to in section 271-A, have all the powers and functions exercisable by a Judicial Magistrate of the first class or of the second class and the provisions of this Code shall *mutatis mutandis* apply to such Executive Magistrate of the first class or of the second class as they apply to a Judicial Magistrate of the first class or of the second class."

Powers and functions of Executive Magistrate of first class or of second class.

4. In section 407 of the principal Act, in sub-section (2), after the existing proviso, the following new proviso shall be inserted, namely:—

Amendment of section 407.

"Provided further that no application shall lie to the High Court for the transfer of a case from the court of one Executive Magistrate of the first class or of the second class to another such court in the same district, unless an application for such transfer has been made to the District Magistrate and rejected by him."

5. In section 408 of the principal Act, after sub-section (2), the following proviso shall be inserted, namely:—

Amendment of section 408.

"Provided that where an application for the transfer of a case from the court of the Executive Magistrate of the first class or of the second class to another such court has been made to the District Magistrate, no such application shall be made to the Sessions Judge."

6. After the Second Schedule to the principal Act, the following Third Schedule shall be added, namely:—

Insertion of Third Schedule.

"THE THIRD SCHEDULE

(See section 271-A)

1. Offences under Chapters VIII, X, XIV, XV and XXII of the Indian Penal Code (45 of 1860);
2. offences under the Public Gambling Act, 1867 (3 of 1867) as amended in its application to the State of Himachal Pradesh;
3. offences under the Explosives Act, 1884 (4 of 1884);
4. offences under the Motor Vehicles Act, 1939 (4 of 1939) as amended in its application to the State of Himachal Pradesh;
5. offences under the Arms Act, 1959 (54 of 1959); and
6. offences under the Prevention of Damages to Public Property Act, 1984 (3 of 1984)."

STATEMENT OF OBJECTS AND REASONS

The Government of Himachal Pradesh have considered it necessary to confer the powers to try offences having a nexus with law and order on the Executive Magistrates. These offences fall under Chapters VIII, X, XIV, XV and XXII of the Indian Penal Code (45 of 1860), Public Gambling Act, 1867 (3 of 1867) as amended in its application to the State of Himachal Pradesh, offences under the Explosives Act, 1884 (4 of 1884), offences under the Motor Vehicles Act, 1939 (4 of 1939) as amended in its application to the State of Himachal Pradesh, offences under the Arms Act, 1959 (54 of 1959), and offences under the Prevention of Damages to Public Property Act, 1984 (3 of 1984).

A large number of criminal trials in petty matters consume a lot of time of Criminal Courts. In case, petty offences are allowed to be tried by the Executive Magistrates, the Judicial Courts can deal with cases of more serious nature promptly and can pay adequate attention to such cases. Further, under the Code of Criminal Procedure, 1973, complete separation of Judiciary from the Executive has brought about erosion of powers of the Executive Magistrates resulting in their having to face difficulties in maintaining law and order effectively. This purpose cannot be achieved unless the Criminal Procedure Code is amended in its application to the State of Himachal Pradesh.

This Bill seeks to achieve the aforesaid objectives.

VIRBHADRA SINGH,
Chief Minister.

SHIMLA :

The 28th December, 1987.

FINANCIAL MEMORANDUM

The provisions of the proposed Bill are to be enforced through the existing Government machinery and as such no additional financial burden is likely to be cast on the State Exchequer.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill empowers the State Government to make rules, in consultation with the High Court, in order to confer on any Gazetted Officer functioning as an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class to try all or any of the offences referred to in clause 3 of the Bill.

Clause 3 empowers the District Magistrate to make rules or to give special orders consistent with the Code as to the distribution of business among the Executive Magistrates of the first class and of the second class.

The proposed delegation is essential and normal in character.